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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/699,396	10/31/2000	Shyam S. Bayya	79693	9262

7590 10/03/2003

EXAMINER

Associate Counsel Patents Code 1008.2

Naval Research Laboratory
4555 Overlook Ave S W
Washington, DC 20375-5320

ART UNIT	PAPER NUMBER
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DATE MAILED: 10/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Notification of Non-Compliance With 37 CFR 1.192(c)	Application No. 09/699,396	Applicant(s) BAYYA ET AL.
	Examiner Michael Cleveland	Art Unit 1762

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 7/24/2003 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPPLICATE a complete new brief in compliance with 37 CFR 1.192(c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH** or **THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENSIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. A single ground of rejection has been applied to two or more claims in this application, and
 - (a) the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) the brief includes the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. Other (including any explanation in support of the above items):

See attached.

NOTICE OF DEFECTIVE APPEAL BRIEF

1. The appeal brief is defective because it does not contain the correct status of all the claims in the case because no proposed After Final amendment has been entered.
2. The appeal brief is defective because it does not contain the correct status of the second After Final amendment (filed 4/4/03, Paper No. 16), and because it does not mention the third After Final amendment (filed 7/24/03, Paper No. 19). **None of the three proposed After Final amendments has been entered. None of the three proposed After Final amendments will be entered.**
3. The brief does not contain, for each rejection under 35 U.S.C. 112, (second paragraph), an argument which specifies the errors in the rejection and how the claims particularly point out and distinctly claim the subject matter which applicant regards as the invention. (However, an amendment to cancel claim 14, and an amendment to include “sodium phosphate” in the list of precursors of claim 20 would resolve these issues.)
4. The appeal brief is also defective because it does not contain a correct copy of the appealed claims in part because no proposed After Final amendment has been entered. (The location of each current claim is listed in the boldface section below.)

Response to After Final response dated 8/15/2003:

- MA ②*
5. **The proposed After Final amendment will not be entered because it raises new issues for further search and consideration^{1,2}, because the amendment is non-compliant because it does not contain a marked-up version of newly amended claims 1, 4, 13, and 20. Applicant’s proposed amendments to claims 1 and 13 would raise the issue of clarity under 35 USC 112, 2nd paragraph for the reasons given in the prior advisory actions. Further, the amendment to claim 13 would raise new issues for further search and consideration because it would narrow the scope of the claims by removing the phrase “and/or to improve integrity of the coating”.**

(Some confusion as to the claim status appears to exist because the proposed amendment is substantially identical to the After Final amendment filed 4/4/2003 (Paper No. 16), but the changes in claims 1 and 13 have not been highlighted. The proposed amendment also includes claims 4 and 20, as proposed in the After Final amendment filed 2/24/03 (Paper No. 13). No

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proposed After Final amendment has been entered.) The current claim status is as follows: The amendment filed 8/15/2002 (Paper No. 8) contains the current text of claims 1, 3, 4, 7, 8, 10, 11, 13, 14, 15, and 20. The original specification contains the current text of claims 5, 6, 12, and 16-19. Claims 2 and 9 have been canceled.

An amendment After Final would be entered for purpose of Appeal if Applicant submitted a new paper containing the current versions of claims 1, 4, and 13 (See Paper No. 8.), canceling claim 14, amending claims 5, 16, and 17 to add “milliliters of coating solution per gram of phosphor” (This wording is slightly different from the proposed wording of “milliliters of coating solution or precursor solution”; the wording was proposed with the After Final amendments to conform to the proposed language of claim 1. However, those amendment were denied entry because the proposed language rendered the claims more rather than less confusing. The language proposed by the examiner would conform to the current versions of claims 1 and 13.) and properly indicating that claim 20 has been amended to include “sodium phosphate” in the last line. Applicant is reminded that the amendment must also conform to the new amendment format, and present the status of all claims and current text and status of all claims.

Response to Arguments

6. Applicant's arguments filed 8/15/2003 in the After Final amendment have been fully considered but they are not persuasive.

Applicant's remarks in the After Final amendment are directed only to procedural issues. Applicant's states that “the Second Amendment After Final Rejection dated April 4, 2003 has been assumed to have been entered although it remains uncertain”. The amendment was denied entry, as clearly stated in paragraph 9 of the Notice of Non-Compliance mailed 7/6/2003. None of the three proposed After Final amendments has been nor will be entered.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cleveland whose telephone number is (703) 308-2331. The examiner can normally be reached on 8-5:30 M-F, with alternate Mondays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Shrive Beck can be reached on (703) 308-2333. The fax phone numbers for the

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organization where this application or proceeding is assigned are (703) 306-3186 for regular communications and (703) 306-3186 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

mbc

MBC

September 30, 2003



SHIRLEY P. BECK
SUPERVISORY PATENT EXAMINER
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